

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06828,

and

CVT HOLDING SAS
30 avenue Carnot
91345 Massy Cedex
France,

FINANCIÈRE CVT SAS
30 avenue Carnot
91345 Massy Cedex
France,

CONVERTEAM GROUP SAS
30 avenue Carnot
91345 Massy Cedex
France

Defendants.

CASE NO.:

JUDGE:

DECK TYPE: Antitrust

DATE STAMP:

Case: 1:11-cv-01549
Assigned To : Boasberg, James E.
Assign. Date : 8/29/2011
Description: Antitrust

COMPLAINT

Plaintiff, the United States of America ("United States"), acting under the direction of the Attorney General of the United States brings this civil antitrust action to enjoin the proposed acquisition of CVT Holding SAS, Financière CVT SAS, and

Converteam Group SAS (collectively, "Converteam") by General Electric Company ("GE") and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to a share purchase agreement dated March 28, 2011, GE intends to acquire control of Converteam Group SAS by purchasing approximately 90 percent of the shares of CVT Holding SAS and 100 percent of the shares of Financière CVT SAS for approximately \$3.2 billion.

2. GE and Converteam are two of the three leading North American suppliers of low-speed synchronous electric motors used in reciprocating compressors in the oil and gas industry (hereafter "LSSMs").

3. The proposed acquisition would eliminate competition between GE and Converteam for these motors. For a significant number of customers, GE and Converteam are the two best sources of LSSMs. Elimination of competition between GE and Converteam likely would give GE the ability to raise prices or decrease the quality of service provided to these customers. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of LSSMs in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

4. Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Energy, provides power generation and energy delivery technologies in a number of areas in the energy industry, including coal, oil, natural gas, and nuclear energy, as well as in renewable resources such as water, wind,

solar and alternative fuels. GE Energy also manufactures a full range of electric motors, including LSSMs. GE's facility in Peterborough, Canada manufactures LSSMs sold in North America. In 2010, GE's worldwide revenues were \$150 billion and revenues from its Peterborough large motor and generator facility were \$139.1 million.

5. Defendant Convertteam Group SAS, headquartered in Massy Cedex, France, is a wholly and directly owned subsidiary of Financière CVT SAS, a French corporation, which is itself owned by CVT Holding SAS, a French corporation. CVT Holding SAS's equity is held by Barclays Private Equity France, LBO France, and Convertteam Group SAS management. Convertteam is a power conversion engineering company focusing on motors, generators, drives, converters and automation controls. Convertteam manufactures and assembles medium-voltage large electric motors in facilities located in France, the United Kingdom, and the United States. Convertteam's indirectly held United States subsidiary, Electric Machinery Holding Company, manufactures LSSMs in Minneapolis, Minnesota. In 2010, Convertteam's worldwide revenues were \$1.5 billion and revenues from its Minneapolis facility were \$47.7 million.

III. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants GE and Convertteam develop, manufacture and sell LSSMs in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of LSSMs substantially affect interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. §

25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391 (c). Venue is also proper in the District of Columbia for defendant Converteam under 28 U.S.C. § 1391(d).

IV. TRADE AND COMMERCE

A. Industry Background

9. Oil and gas refineries and certain other petrochemical operations utilize reciprocating compressors for processes requiring high-pressure delivery of gases. A reciprocating compressor uses mechanical drivers (motors) to turn its crankshafts and move its pistons, thereby compressing low-pressure gas and making it higher-pressure. Compressor drivers fall into three categories—electric, steam, and gas. The production facility requiring a reciprocating compressor will choose the type of driver based on the facility's available energy or waste supply.

10. Due to the availability of a steady supply of electricity, North American oil refineries generally require an electric driver—a large electric motor—for their reciprocating compressors. Large electric motors consist of a stator and a rotor, with the speed (rotation per minute) of the motor dependent upon the number of rotor poles. Motors that contain more poles operate at slower speeds.

11. Electric motors are either synchronous or induction (also known as asynchronous). Induction motors are easier to manufacture and cheaper to purchase and maintain than synchronous motors. Synchronous motors are more expensive and involve a sophisticated engineering process. They are used in applications that require precise

speed regulation; the motor rotates at a speed proportional to and accurately synchronized with the frequency of the power supply. An induction motor may run slightly slower or faster than the power supply frequency, and will slip as the load increases. Synchronous motors are more efficient than induction motors, will operate at a fixed speed, without any slippage, and provide higher performance at higher power ratings.

12. In processing and refining crude oil into petroleum products, oil refineries use low-speed reciprocating compressors for hydrogen compression to support different refinery operations. For optimal performance and reliability, this application requires a LSSM to drive the compressor. Each LSSM is custom-designed to meet technical performance requirements related to specific facility characteristics. These LSSMs generally operate between 277 to 400 revolutions per minute, meaning they have between 18 to 26 poles, are typically operating at medium voltage, and generate horsepower in the range of 1,500 to 15,000.

13. LSSMs are sold pursuant to bids, which are based on technical specifications from the customer. Suppliers of LSSMs use patented or proprietary technology and know-how—including expertise gained through years or decades of trial and error and expertise with prior installations—to custom design LSSMs that satisfy the customers' technical specifications. LSSMs for use in North America must meet specific National Electrical Manufacturers Association (“NEMA”) regulatory standards, as opposed to the International Electrotechnical Commission (“IEC”) standards applicable to the rest of the world.

14. Customers (in conjunction with the engineering firms that consult for them) evaluate competing bids based on their compliance with technical specifications

and on commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each LSSM project.

15. LSSMs have a useful life ranging from 30 to 40 years. New construction of refineries is uncommon in North America. Purchases of new LSSMs in North America are therefore infrequent; customers typically purchase new reciprocating compressors only when a refinery is expanded or overhauled.

B. Relevant Market

1. Product Market

16. Oil refineries rely on heavy equipment that consumes large amounts of electricity twenty-four hours per day. To operate effectively, refineries generally are connected directly to the electricity grid, in lieu of receiving power through distribution lines, which are less efficient. This direct connection to the grid means that equipment in the refinery usually operates at a much higher power level than equipment not so connected. In order to minimize energy costs, refineries require a LSSM, which uses electrical energy more efficiently than other types of motors. Use of a LSSM guarantees that the motor always will operate at precisely the power factor of the refinery and that the refinery's reciprocating compressor will be driven at a fixed speed, reducing energy losses. By comparison, an induction motor would require significantly larger amounts of electricity to perform the same amount of work.

17. A small but significant increase in the price of LSSMs would not cause a sufficient number of customers to substitute another type of motor or to a motor built to IEC standards so as to make such a price increase unprofitable. Accordingly, the

development, manufacture, and sale of LSSMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. **Geographic Market**

18. GE and Converteam compete on bids to customers for LSSMs in North America. GE manufactures LSSMs at facilities in Peterborough, Ontario, Canada for sale in North America. Converteam manufactures LSSMs in Minneapolis, Minnesota for sale in North America. Virtually all LSSMs purchased by oil and gas customers in North America are manufactured in facilities located in North America.

19. Those competitors that could constrain GE from raising prices to customers on bids for LSSMs in North America typically are suppliers with a physical presence in North America, including manufacturing, sales, technical and support personnel, and parts distribution. These competitors are most familiar with NEMA regulatory standards.

20. Refineries prefer such suppliers because, during the bid, design, assembly, and installation phases of a LSSM project, customers interact with suppliers to address design recommendations and changes, track assembly progress, and ensure successful installation. Further, customers purchasing LSSMs can avoid costly delays or down time in refinery operations by selecting a LSSM supplier that is able to respond quickly to requests for service or replacement parts during the operating life of the LSSM.

21. A small but significant increase in the price of LSSMs would not cause a significant number of customers in North America to turn to manufacturers of LSSMs that do not conform to North American standards so as to make such a price increase unprofitable. Accordingly, sales to customers in North America is a relevant geographic

market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effect of the Acquisition

22. GE's acquisition of Converteam likely would substantially lessen competition in the North American LSSM market. GE and Converteam have consistently bid against each other on nearly all LSSM projects since 2007. The competition between GE and Converteam in the development, production, and sale of LSSMs has benefited customers. GE and Converteam compete directly on price, terms of sale, and service. For many oil refineries, Converteam is the preferred alternative to GE. The proposed acquisition would eliminate GE's most significant competitor in the sale of LSSMs to customers in North America.

23. Only three competitors, including GE and Converteam, have sold LSSMs in North America since 2007. The third company often does not submit bids on North American LSSM projects, and has failed to achieve a significant share of the market. The fact that the third company rarely wins against GE and Converteam suggests that customers find GE and Converteam's products more attractive relative to the third provider.

24. GE's acquisition of Converteam would eliminate many customers' preferred alternative to GE and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, GE would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

25. The response of the remaining LSSM manufacturer would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. GE would be aware that many customers strongly prefer it as a supplier, allowing it to

raise prices above pre-acquisition levels. No longer constrained by Converteam's price, post-acquisition, GE would raise its prices to the monopoly level for customers that require either GE or Converteam. For customers that can consider an option other than the parties, prices would rise to the level of the third bidder. Thus, the acquisition of Converteam by GE creates an incentive for GE to bid a higher amount than it would if Converteam were still a competitor. Elimination of Converteam as a competitor also would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale favorable to customers and to invest in service, quality and technology improvements.

26. Therefore, the acquisition would substantially lessen competition in the development, manufacture, and sale of LSSMs to customers in North America and lead to higher prices, less favorable terms of sale, and decreased quality of service in the LSSM market, in violation of Section 7 of the Clayton Act.

D. Entry into the Low Speed Synchronous Electric Motor Market

27. Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by the elimination of Converteam as a bidder.

28. A small number of companies have sold LSSMs outside North America, but these companies have no relevant, substantial North American presence. Given the small size of the North American LSSM market, they are unlikely to invest in the capital infrastructure required to compete effectively in North America.

29. Firms attempting to enter the development, manufacture, and sale of LSSMs to customers in North America face barriers to entry. Establishing a reputation

for successful performance and gaining customer confidence in a specific firm's LSSM are significant barriers to entry. North American customers require equipment built to NEMA standards. Many suppliers that operate globally do not have familiarity with these standards. North American oil and gas refineries are reluctant to purchase a LSSM from a supplier that does not have a reputation and track record of successful performance on reciprocating compressors operating in North America. Establishing a reputation for successful performance and/or gaining customer confidence can take years and the expenditure of substantial sunk costs.

30. Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind the LSSM order, to respond quickly and effectively to a request for service or parts, and to meet warranty obligations years after the initial sale. A supplier of LSSMs therefore must be able to prove that it is financially sound.

31. For these reasons, entry or expansion by other firms into the North American market for the development, manufacture, and sale of LSSMs would not be timely, likely or sufficient to defeat the substantial lessening of competition that likely would result if GE acquires Converteam.

V. VIOLATION ALLEGED

32. The acquisition of Converteam by GE would substantially lessen competition in the market for the development, manufacture, and sale of LSSMs to customers in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

33. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. actual and potential competition between GE and Converteam in the market for the development, manufacture, and sale of LSSMs to customers in North American will be eliminated;

b. competition generally in the market for the development, manufacture, and sale of LSSMs to customers in North America will be substantially lessened; and

c. prices for LSSMs in North America likely will increase, the terms of sale to customers in North America likely will be less favorable, and quality of service relating to LSSMs in North America likely will decline.

VI. REQUESTED RELIEF

34. Plaintiff requests that this Court:

a. Adjudge and decree GE's proposed acquisition of Converteam to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

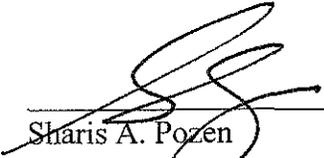
b. Preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition of Converteam by GE or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Converteam with the operations of GE;

c. Award the United States its costs for this action; and

d. Award the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA



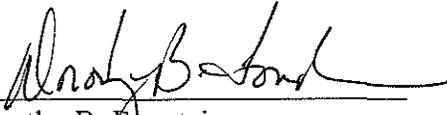
Sharis A. Pozen
Acting Assistant Attorney General



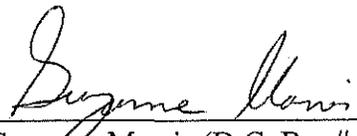
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